IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

LARRY DARNELL MOSLEY, Plaintiff, vs. BLACK HAWK COUNTY, IOWA, and JOHN DOES ONE THROUGH FIVE, unknown Deputy Sheriffs for the Black Hawk County, Iowa Sheriff's Department, Defendants.	)	No. C00-2024 MJM **OPINION and ORDER**

In this lawsuit, Plaintiff Larry Darnell Mosley claims that on March 18, 1998, while he was a pretrial detainee at the Black Hawk County jail, he was assaulted without justification by jail personnel. In Count I, pursuant to 42 U.S.C. § 1983, Mr. Mosley asserts that he was deprived of his right to be free from the use of excessive force set forth under the Fourth and Fourteenth Amendments to the United States Constitution. He further claims that Defendant Black Hawk County, as a matter of policy and practice, has, with deliberate indifference, failed to adequately discipline, train or otherwise direct its officers concerning the rights of citizens, thereby causing its officers to engage in the alleged unlawful conduct complained of by Mr. Mosley. In Count II, Mr. Mosley claims that Defendants are liable under Iowa law for the torts

of assault and battery and intentional infliction of emotional distress. Defendants deny the allegations and affirmatively assert the defense of qualified immunity.

Presently before the Court is Defendants' motion for summary judgment in which Defendants argue that all of Plaintiff's claims are barred by the doctrine of qualified immunity. For the reasons discussed herein, Defendants' motion is denied.

I.

At approximately 2:05 a.m. on March 18, 1998, Larry Darnell Mosley was arrested by Officer Robert Duncan of the Waterloo Police Department. Officer Duncan initially pulled Mr. Mosley over for failure to have his headlights on. When he approached Mr. Mosley, Officer Duncan observed that Mr. Mosley smelled of alcohol and had bloodshot and watery eyes. Officer Duncan then requested Mr. Mosley to perform field sobriety tests to which Mr. Mosley responded with verbal abuse and argument. Mr. Mosley refused a preliminary breath test and failed the field sobriety test. Mr. Mosley was then asked to sit in the back seat of the patrol car. After several requests to do so, Mr. Mosley was placed in the police car and transported to the Black Hawk County jail where he was charged with operating while intoxicated (OWI) and failure to have his headlights on.

Upon his arrival at Black Hawk County jail, Mr. Mosley continued to be verbally abusive and generally uncooperative. He is a large man with an athletic and muscular build, standing approximately 6 feet 6 inches tall and weighing

approximately 250 pounds. After he was searched, officers placed Mr. Mosley in a holding cell. He remained handcuffed while in the cell. At some point, Officer Duncan approached Mr. Mosley's cell, apparently entered the cell, and informed Mr. Mosley that he was going to read him the implied consent advisory regarding administration of a breath test. Also present was Deputy Morris Wagner. Mr. Mosley vociferously and profanely expressed his disinterest in hearing anything that Officer Duncan had to say. From this point on, the parties' versions as to what happened dramatically diverge.

Defendants contend that when Officer Duncan began to read the consent advisory, Mr. Mosley got off his bunk and came toward Officer Duncan at which point Deputy Wagner physically stopped him and placed him back on his bunk. When Officer Duncan resumed reading, Mr. Mosley again got off his bunk and came toward Officer Duncan. Deputy Wagner intervened by placing his hand and arm out to stop him. When Mr. Mosley continued to push toward Officer Duncan, Deputy Wagner issued a one-second spray of Punch II ("pepper spray"). Mr. Mosley was placed on his bunk and told not to get up. Despite this order, Mr. Mosley again advanced toward Officer Duncan. At this point a second one-second spray was administered. Mr. Mosley was then placed in the restraint chair where Deputy Wagner and Sergeant Tom Roberts applied wet, cool towels to his face to decontaminate him. When he calmed down and agreed to cooperate he was

released from the restraint chair and moved to a clean cell.

Mr. Mosley vigorously disputes the facts set forth by Defendants. He attests that although he admittedly used language that was inappropriate he never threatened the use of physical harm nor did he ever physically intimidate anyone. According to Mr. Mosley, after his refusal to take the breath test he was told to shut up and his handcuffs were tightened. When he complained about the handcuffs hurting his wrists the officers again demanded that he shut up and began spraying pepper spray directly in his eyes and all over his face. Mr. Mosley asserts that he was completely incapacitated by the pepper spray but officers continued to spray him during the process of removing his handcuffs and placing him in the restraint chair. Even after he was fully immobilized in the restraint chair, officers again sprayed him. Mr. Mosley began to cry and asked the officers why they were doing this to him, to which an officer responded that he "should have shut up earlier." Mr. Mosley pleaded for assistance and relief from the burning to his face and eyes. He claims that he received no assistance for at least 40 minutes, at which time a wet rag was used on his face. He was kept in the restraint chair for a total period of 1 ½ to 2 hours. Mr. Mosley maintains that prior to being sprayed he never made any physical movements that could have reasonably been interpreted as threatening, and, more specifically, he contends he never jumped off his bunk or approached Officer Duncan.

II.

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the Court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 327 (1986)*; Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986); *Montgomery v. John Deere & Co.*, 169 F.3d 556, 559 (8th Cir. 1999). A fact is material if it might affect the outcome of the suit under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). An issue of material fact is genuine "if it has a real basis in the record." *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Matsushita*, 475 U.S. at 586-87).

III.

Under the doctrine of qualified immunity, state actors are protected from civil liability when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (internal quotations omitted), *quoted in Sexton v. Martin*, 210 F.3d 905, 909 (8th Cir. 2000); *McCaslin v. Wilkins*, 183 F.3d 775, 778 (8th Cir. 1999). The qualified immunity inquiry is a two-step process. First, the Court must ask, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v.*

Katz, 121 S. Ct. 2151, 2156 (2001); *accord Munz v. Michael,* 28 F.3d 795, 799 (8th Cir. 1994). If a violation could be made out, the next step is to ask whether the constitutional right was clearly established in light of the specific context of the case. *See Saucier*, 121 S. Ct. at 2156. "For a right to be deemed clearly established, the 'contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Buckley v. Rogerson*, 133 F.3d 1125, 1128 (8th Cir. 1998) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

"[T]here is no doubt that *Graham v. Connor*, [490 U.S. 386 (1989)], clearly establishes that use of force during an arrest is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness." *Saucier*, 121 S. Ct. at 2156; *see also Winters v. Adams*, 254 F.3d 758, 765 (8th Cir. 2001) ("All claims that law enforcement officers have used excessive force in the course of an arrest . . . should be analyzed under the reasonableness standard of the Fourth Amendment."). In *Winters*, the Eighth Circuit summarized the applicable inquiry for determining whether, in a particular case, a Fourth Amendment violation has been established:

> '[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.' [*Graham*, 490 U.S.] at 397. 'The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly

> evolving -- about the amount of force that is necessary in a particular situation.' *Id.* at 396-97. In making an assessment of objective reasonableness, the Supreme Court stated that certain factors should be balanced, 'including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.' *Id*. at 396.

Winters, 254 F.3d at 765.

Even if the plaintiff can establish a constitutional violation by excessive force, the second step of the qualified immunity inquiry may still shield an officer from suit if his conduct was "objectively legally reasonable" in light of the information he possessed at the time of the alleged violation. *See Harlow*, 457 U.S. at 819. In other words, if the officer's mistake as to what conduct the law required is reasonable, he is entitled to the immunity defense. *Saucier*, 121 S. Ct. at 2158. Thus, "[q]ualified immunity operates . . . to protect officers from the sometimes 'hazy border between excessive and acceptable force,' and to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Saucier*, 212 S. Ct. at 2158 (internal citations omitted). That said, "'[d]efendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded' that the defendant should have taken the disputed action." *Winters*, 254 F.3d at 766 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Applying these principles to the case at bar, it is evident that Defendants'

summary judgment motion cannot be granted on the record as it now stands. As to the first step of the qualified immunity analysis, Plaintiff has sufficiently asserted a violation of his Fourth Amendment right to be free from excessive force during the course of an arrest. Construing the facts in the light most favorable to Plaintiff, the officers' conduct in repeatedly pepper spraying an arrestee for what amounts to obnoxious and disrespectful comments was not objectively reasonable, particularly where the arrestee was already handcuffed and housed in a holding cell. None of the concerns in *Graham* are implicated here, at least at the time of the alleged excessive force: Plaintiff was not attempting to evade arrest; the nature of the charged offense was not particularly severe; and, according to Plaintiff, he made no comments or movements that could be reasonably construed as physically threatening to himself or the officers. The Court does not doubt that under some circumstances, or in some environments, obstreperous behavior by an intoxicated arrestee will be sufficient to justify the use of pepper spray by officers. However, under the facts as attested by Plaintiff, the Court cannot find as a matter of law that the officers' conduct here was objectively reasonable. *Cf. Winters*, 254 F.3d at 765 (finding that officer's single blow to plaintiff's eye during "fracas in vehicle," where plaintiff was kicking and flailing to prevent his arrest by officers, was objectively reasonable); *Lawson v. Hulm*, 223 F.3d 831, 834-35 (8th Cir. 2000) (finding officers'

conduct in tackling plaintiff objectively reasonable where plaintiff was holding partially concealed knife in his hand and involved in what reasonably appeared to be a confrontation with another officer); *McGruder v. Heagwood*, 197 F.3d 918, 920 (8th Cir. 1999) (officers' use of force in bending and pulling arrestee's wrist to force him out of car was not excessive where objectively reasonable officers could have believed that plaintiff was resisting arrest by refusing to exit vehicle); *Moore v. Novak*, 146 F.3d 531, 533-34 (8th Cir. 1998) (finding use of stun gun objectively reasonable where handcuffed arrestee was intoxicated, agitated, refused to comply with demands, and, significantly, *kicked the arresting officer, continued to struggle and attempt to get away*).

Turning to the second, more particularized inquiry in the qualified immunity analysis, the Court concludes that under the facts alleged by, and viewed in favor of, Plaintiff, it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *See Saucier*, 121 S. Ct. at 2156 (citing *Wilson v. Layne*, 526 U.S. 603, 615 (1999). A reasonably competent law enforcement officer should know that Plaintiff's obnoxious drunkenness alone, absent any danger of flight or physical threat to others or himself, is not sufficient grounds for the excessive force alleged in the complaint and in Plaintiff's supporting affidavit. Again, this is particularly true where the alleged excessive force occurred in the relatively

controlled environment of the Black Hawk County jail and where the arrestee had already been placed in a cell and handcuffed. Of course, if Defendants' version of the story is true, qualified immunity would be appropriate. However, viewing the facts in the light most favorable to Plaintiff, as the Court must at this stage, Plaintiff was maliciously pepper-sprayed by one or more officers while handcuffed and restrained apparently in response only to his large size and perceived lack of respect and cooperation. In light of the absence of any other undisputed material facts that would permit the Court to find that the officers' actions were objectively reasonable under the specific facts confronted by them, the Court cannot grant Defendants' motion for summary judgment on qualified immunity grounds.[1] *See Arnott v. Mataya*, 995 F.2d 121, 124 (8th Cir. 1993) (stating that summary judgment based on qualified immunity is inappropriate "[i]f the arrestee challenges the officer's description of the facts and presents a factual account where a reasonable officer would not be justified in making an arrest"), *cited in Goff v. Bise*, 173 F.3d 1068, 1072-73 (8th Cir. 1999) (affirming district court's denial of qualified immunity on excessive force claim where material factual disputes remained regarding the circumstances surrounding the use of force and the extent of force used by officer and mayor during course of arrest

[1] Defendants' motion for summary judgment on the state law claims turns largely on the same considerations and analysis as applied in the 42 U.S.C. § 1983 discussion. In light of the Court's conclusion on the latter, summary judgment on the state law claims would also be inappropriate at this time.

arising out of personal dispute between mayor and arrestee); *Lambert v. City of Dumas*, 187 F.3d 931, 936 (8th Cir. 1999) (affirming denial of summary judgment on qualified immunity where parties disputed the amount and degree of force used during arrest of intoxicated burglary suspect); *Greiner v. City of Champlain*, 27 F.3d 1346, 1353-54 (8th Cir. 1994) (explaining that in determining whether a given set of facts entitles official to summary judgment on qualified immunity grounds, if there is genuine dispute concerning predicate facts material to qualified immunity issue, there can be no summary judgment).

ORDER

For the reasons discussed herein, it is Ordered:

Defendants' motion for summary judgment is Denied.

Done and so ordered this 4th day of October, 2001.

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Michael J. Melloy, Judge
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA